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10 Attorneys for Plaintiff STEFFON BARBER

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 STEFFON BARBER, an individual,  
14 Plaintiff,  
15 vs.

16 COUNTY OF SAN BERNARDINO and  
17 CHRISTOPHER ALFRED,  
18 Defendants.

Case No. 5:22-cv-00625-KK-DTB

Assigned to:  
District Judge Kenly Kiya Kato  
Magistrate Judge David T. Bristow

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION IN  
LIMINE NO. 3 TO EXCLUDE  
DRUG EVIDENCE**

Final PTC: January 8, 2026  
Time: 10:30 a.m.  
Crtrm: 3, 3rd Floor  
3470 Twelfth Street  
Riverside, CA 92501-3801

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that Plaintiff hereby moves *in limine* for an order  
24 excluding any evidence of Plaintiff Steffon Barber's drug use, including but not  
25 limited to: (1) any criminal history relating to drug use or drug offenses as explained  
26 in Plaintiff's Motion in Limine No. 1, including Mr. Barber's 2006 vehicle code  
27 violation for driving under the influence and his 2012 misdemeanor possession of  
28 controlled substance; (2) the April 28, 2021 Bio-Tox Laboratories Report (COSB

00129) indicating the presence of methamphetamine and benzodiazepines after the shooting; (3) any hearsay statements regarding Mr. Barber's drug use contained in any medical records or police reports; (4) any testimony by any party, including Defendants' retained experts Gary Vilke, M.D. and Phillip Sanchez, the neighbors (Maria Gallo and Joseph Cocchi), as well as Plaintiff Mr. Barber, regarding Mr. Barber's drug use; (5) the 911 call, which was not heard by Deputy Alfred, where the reporting party mentions that Mr. Barber appeared to be under the influence.

Plaintiff makes this Motion under Federal Rules of Evidence, Rules 402 and 403 and on the grounds that this evidence is immaterial to the issues to be decided by the jury in the instant case. This Motion is also made on the grounds that any written reports containing this information are hearsay for which there is no exception under Federal Rules of Evidence, Rules 801 and 802.

This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the records and files of this Court, and upon such other oral and documentary evidence as may be presented at the time of the hearing.

**Statement of Local Rule 7-3 Compliance:** This Motion is made following a conference of counsel during which no resolution could be reached.

Dated: December 11, 2025

IVIE MCNEILL WYATT  
PURCELL & DIGGS

By: s/ Rodney S. Diggs

Rodney S. Diggs  
Attorney for Plaintiff, Steffon Barber

Dated: December 11, 2025

LAW OFFICES OF DALE K. GALIPO

By: s/ Renee V. Masongsong

Dale K. Galipo  
Renee V. Masongsong  
Attorneys for Plaintiff, Steffon Barber

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This case arises out of the non-fatal shooting of Steffon Barber by San Bernardino Sheriff's Deputy Christopher Alfred. The key issue in this case is whether Deputy Alfred's use of deadly force against Mr. Barber was excessive and unreasonable. It is well settled that information unknown to the involved officers at the time of the shooting incident is irrelevant to the determination of whether a reasonable deputy in Alfred's position would have had an objectively reasonable belief that there was an immediate threat of death or serious bodily injury at the time of the shots. Deputy Alfred testified at his deposition that at the time of the shooting, he had no information as to whether Mr. Barber was under the influence of drugs or alcohol. (Alfred Depo., Dkt. 101-5 at pp. 31:23-25). Nonetheless, Plaintiff anticipates that Defendants will attempt to introduce evidence of Mr. Barber's drug use at trial, including information that methamphetamine was present in his blood after the shooting.

Therefore, to avoid prejudice to Plaintiff and to streamline the evidence only to that which is relevant, Plaintiff seeks to exclude any evidence of, reference to, or argument regarding Plaintiff Steffon Barber's drug use, including but not limited to: (1) any criminal history relating to drug use or drug offenses as explained in Plaintiff's Motion in Limine No. 1, including Mr. Barber's 2006 vehicle code violation for driving under the influence and his 2012 misdemeanor possession of controlled substance; (2) the April 28, 2021 Bio-Tox Laboratories Report (COSB 00129) indicating the presence of methamphetamine and benzodiazepines at the time of the incident; (3) any hearsay statements regarding Mr. Barber's drug use contained in any medical records or police reports; (4) any testimony by any party, including Defendants' retained experts Gary Vilke, M.D. and Phillip Sanchez, the neighbors (Maria Gallo and Joseph Cocchi), as well as testimony Plaintiff Mr. Barber, regarding Mr. Barber's drug use; (5) the 911 call, which was not heard by

1 Deputy Alfred, where the reporting party mentions that Mr. Barber appeared to be  
2 under the influence. This evidence has no bearing on whether the shooting was  
3 excessive and unreasonable and only serves to detract the jury from the key issue in  
4 the case and paint Mr. Barber as undeserving of redress for his serious physical  
5 injuries caused by the shooting. Further, any argument that the drugs in Mr.  
6 Barber's system had caused Mr. Barber to act a certain way during the incident is  
7 purely speculative, as Defendants have not retained any expert to make any opinions  
8 about Mr. Barber's drug use.

9 Plaintiff seeks to exclude the foregoing evidence on the following grounds:  
10 First, this evidence is irrelevant pursuant to Federal Rules of Evidence ("FRE"),  
11 Rules 401 and 402, because this evidence is immaterial to the issues to be decided  
12 by the jury, as it was unknown to Deputy Alfred at the time of the shooting.  
13 Second, this evidence should be excluded under FRE 403 on the grounds that it  
14 would confuse the issues, mislead the jury, cause undue delay, and waste this  
15 Court's time. Further, such evidence would be unduly prejudicial to Plaintiff under  
16 FRE 403, and such prejudicial effect would greatly outweigh any possible probative  
17 value of this evidence. Third, this evidence constitutes improper character evidence  
18 under FRE 404. Finally, any reports containing this evidence constitute hearsay for  
19 which there is no exception under FRE 801, 802.

## 20 **II. ARGUMENT**

### 21 **A. This Evidence Is Irrelevant and Should be Excluded Under FRE 402.**

22 FRE 402 states in part that evidence which is not relevant is not admissible.  
23 Under *Graham v. Connor*, 490 U.S. 385, 397 (1989), evidence of facts and  
24 circumstances not known to the involved officers at the time of the shooting incident  
25 are irrelevant. *See also Witt v. West Virginia State Police, Troop 2*, 633 F.3d 272,  
26 275 (4th Cir. 2011) (noting district court's decision that the plaintiff's "criminal  
27 history and possession of illegal narcotics . . . are irrelevant to the excessive force  
28 analysis because, as the troopers themselves acknowledge, they 'did not know' these

1 facts ‘at the time’ they allegedly beat [the plaintiff]”); *Palmquist v. Selvik*, 111 F.3d  
2 1332, 1339 (7th Cir. 1997) (“[W]hen considering a charge of excessive force under  
3 the Fourth Amendment, evidence outside the time frame of the shooting is irrelevant  
4 and prejudicial.”).

5 Evidence of Mr. Barber’s drug use is irrelevant to whether it was objectively  
6 reasonable for Deputy Alfred to use deadly force against Mr. Barber. The jury must  
7 evaluate the decision to use deadly force based on what a reasonable officer at the  
8 time would have perceived. “The ‘reasonableness’ of a particular use of force must  
9 be judged from the perspective of a reasonable officer on the scene, rather than with  
10 the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396. Use of subsequent test  
11 results is the very essence of “20/20 hindsight” vision. Deputy Alfred testified at his  
12 deposition that at the time of the shooting, he had no information that Mr. Barber  
13 was under the influence of drugs or alcohol. (Alfred Depo., Dkt. 101-5 at pp. 31:23-  
14 25). Obviously, Deputy Alfred could not have known the results of the toxicology  
15 screening at the time of the shooting. The post-shooting drug evidence also does not  
16 help to resolve any disputed factual issue. The central dispute in this case is  
17 whether, as defendants contend, Mr. Barber’s vehicle posed an immediate threat of  
18 death or serious bodily injury to Deputy Alfred at the time of the shooting, or, as  
19 Plaintiff contends, Deputy Alfred was not about to be struck by Mr. Barber’s vehicle  
20 and Deputy Alfred had time and room to move out of the vehicle’s path rather than  
21 shooting. The jury will weigh the evidence presented at trial to determine which  
22 factual scenario is true. Mr. Barber’s drug use does not help resolve this dispute.  
23 Deputy Alfred does not claim to have shot Mr. Barber because he thought he was  
24 under the influence. Deputy Alfred did not hear the 911 call where the reporting  
25 party indicating that Mr. Barber may appear to be under the influence.

26 Further, no party has retained any expert to examine the level of  
27 methamphetamine or any other drug in Mr. Barber’s system, or to discuss the  
28 impact of Mr. Barber’s drug use on his conduct during the incident. Therefore, any

1 argument that Deputy Alfred’s version of the events is more likely to be true  
2 because Mr. Barber had some level of drugs in his system, or that Mr. Barber acted  
3 a certain way because he used drugs prior to the incident, is purely speculative.

4 **B. This Evidence Is Unduly Prejudicial and Should be Excluded Under**  
5 **FRE 403.**

6 It is axiomatic that evidence of drug or alcohol use has a strong potential for  
7 unfair prejudice. Meanwhile, its probative value in this case is, as explained above,  
8 is nil. Accordingly, this evidence should be excluded under FRE 403. FRE 403  
9 excludes even relevant evidence “if its probative value is substantially outweighed  
10 by the danger of the unfair prejudice, confusion of the issues, or misleading the jury,  
11 or by considerations of undue delay, waste of time, or needless presentation of  
12 cumulative evidence.” “Unfair prejudice” means “undue tendency to suggest  
13 decision on an improper basis, commonly, though not necessarily, an emotional  
14 one.” *United States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000); *Larez v. City*  
15 *of Los Angeles*, 946 F.2d 630, 642 n.5 (9th Cir. 1991) (noting that evidence is likely  
16 to inflame the jury if it tends to evoke a juror’s anger or punitive impulses).

17 Evidence of drug use can only serve to unjustly inflame a jury’s passions and  
18 prejudices against Mr. Barber and is highly likely to mislead the jury into reaching a  
19 verdict that reflects its consideration of Mr. Barber’s drug use to justify the use of  
20 force or limit Mr. Barber’s damages on an improper basis. *See Gregory v. Oliver*,  
21 2003 WL 1860270, at \*2 (N.D. Ill. Apr. 9, 2003) (granting a motion in limine in an  
22 excessive force case to exclude drug paraphernalia the officers discovered after the  
23 alleged excessive force occurred, because it was irrelevant and unduly prejudicial  
24 under FRE 403 and stating, “In today’s climate, any evidence as to a litigant’s use of  
25 drugs has an obvious potential for being extraordinarily prejudicial—for creating the  
26 prospect of deflecting the factfinders’ attention from the matters that are really at  
27 issue in the case to everyone’s universally-shared concerns as to the problems that  
28 drug usage is creating for our society”); *Kunz v. DeFelice*, 538 F.3d 667, 676-77



(7th Cir. 2008) (affirming district court’s ruling that barred “use of the word ‘heroin,’ because at the time of the arrest, the officers did not know the nature of the drug or Kunz’s usage and because mention of heroin would be more prejudicial than helpful”); *Jackson v. City of Gahanna*, 2011 WL 587283, at \*5 (S.D. Ohio Feb. 9, 2011) (“Allowing evidence of the illegal items seized from the Plaintiff on October 22, 2011 would undermine the protections of the Fourth Amendment by permitting the jury to infer that the Plaintiff’s culpability or status as a presumed drug dealer justify the Defendant’s use of force against him.”); *Wisler v. City of Fresno*, 2008 WL 2954179, at \*5 (E.D. Cal. 2008) (excluding evidence of marijuana use on grounds it was unduly prejudicial because not known by Defendants); *Wiersta v. Heffernan*, 789 F.2d 968, 972 (1st Cir. 1986) (“Convictions for possession of a syringe and hypodermic needle and possession of heroin . . . are unquestionably highly prejudicial.”); *Wilson v. Union Pacific R. Co.*, 56 F.3d 1226, 1231 (10th Cir. 1995) (“Evidence of a conviction for drug possession alone . . . can be highly prejudicial and arouse jury sentiment against a party-witness.”).

Admission of drug evidence also poses a substantial risk of leading to “litigation of collateral issues, thereby creating a side issue which might distract the jury from the main issues.” *Blancha v. Raymark Industries*, 972 F.2d 507, 516 (3d Cir. 1992); *Rockwell v. Yukins*, 341 F.3d 507, 513 (6th Cir. 2003) (en banc); *Arlio v. Lively*, 474 F.3d 46, 53 (2d Cir. 2007). Refuting the inferences that Defendants may attempt to raise regarding Mr. Barber’s drug use will necessitate a mini-trial on collateral issues.

### **C. This Evidence Constitutes Impermissible Character Evidence Under FRE 404**

FRE 404(a) provides that “Evidence of a person’s character or a trait of a character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Under FRE 404, evidence of drug use cannot be used to show Mr. Barber’s character or that he acted or would have acted in conformity with

1 any negative character trait in the future. *Palmerin v. Riverside*, 794 F.2d 1409,  
2 1414 (9th Cir. 1985) (“The federal rules bar the use of any circumstantial evidence  
3 that requires an inference of a person’s character to make it relevant . . .”). Lurking  
4 behind Defendants’ anticipated argument about Mr. Barber’s drug use is an  
5 impermissible inference about his character—that people who use drugs are bad,  
6 Mr. Barber had methamphetamines in his system at the time of the shooting and  
7 previously was previously convicted of drug offenses, therefore he is a bad person,  
8 and he must have been attempting to reverse his vehicle into Deputy Alfred.  
9 Because evidence of drug use requires an inference of Mr. Barber’s character to  
10 make it relevant, it should alternatively be excluded on this ground. Moreover,  
11 Ninth Circuit case law is clear that “[c]haracter evidence’ is normally not  
12 admissible in a civil rights case.” *Gates v. Rivera*, 993 F.2d 697, 700 (9th Cir.  
13 1993). Character must be “in issue,” i.e., an essential element of a charge, claim, or  
14 defense, for character evidence to be admitted. *See* Adv. Comm. Notes, Fed. R.  
15 Evid. 405(b); *United States v. Mendoza-Prado*, 314 F.3d 1099, 1103 (9th Cir.  
16 2002). Accordingly, this evidence should alternatively be excluded under Rule 404.

17 **D. This Evidence Is Hearsay Under FRE 801 and 802.**

18 Finally, any reports containing this information, including the Bio-Tox  
19 Laboratory reports, the District Attorney’s Memorandum, defense experts Phillip  
20 Sanchez’s and Gary Vilke’s Rule 26 Reports, police reports, and Mr. Barber’s  
21 medical records, constitute hearsay under FRE 801 and 802. “Hearsay evidence” is  
22 evidence of a statement that was made other than by a witness while testifying at the  
23 hearing and that is offered to prove the truth of the matter stated. Even if a hearsay  
24 statement falls under an exception to the rule, it is not admissible if such statement  
25 consists of one or more statements that are themselves hearsay. Accordingly, any  
26 documents containing information regarding Mr. Barber’s drug use would be  
27 hearsay and should also be excluded on this ground.

28 //



1 **III. CONCLUSION**

2 For the reasons stated above, this Court should grant Plaintiff's instant  
3 Motion *in Limine* and issue an order excluding any evidence of Mr. Barber's drug  
4 use in any form.  
5

6 Dated: December 11, 2025

IVIE MCNEILL WYATT  
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8 By: s/ Rodney S. Diggs

9 Rodney S. Diggs  
10 Attorney for Plaintiff, Steffon Barber  
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12 Dated: December 11, 2025

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13  
14 By: s/ Renee V. Masongsong

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